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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)		Application Number	09/777,274
		Filing Date	2/5/2001
		First Named Inventor	Jean Paul Marcade
		Art Unit	3738
		Examiner Name	David Willse
Total Number of Pages in This Submission	57	Attorney Docket Number	ENDOV-54735

ENCLOSURES (Check all that apply)		
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Firm Name	FULWIDER PATTON LLP		
Signature			
Printed name	John V. Hanley		
Date	3/13/2006	Reg. No.	38,171

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**FEE TRANSMITTAL  
for FY 2006**☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT (\$)** \$500.00**Complete if Known**

Application Number	09/777,274
Filing Date	2/5/2001
First Named Inventor	Jean Paul Marcade
Examiner Name	David H. Willse
Art Unit	3738
Attorney Docket No.	ENDOV-54735

**METHOD OF PAYMENT** (check all that apply)☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☒ Deposit Account Deposit Account Number: 06-2425 Deposit Account Name: Fulwider Patton LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or any underpayments of fee(s) under 37 CFR 1.16 and 1.17☒ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION** (All the fees below are due upon filing or may be subject to a surcharge.)**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid(\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 20 or HP =	x	\$50.00	= \$0.00

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 3 or HP =	x	\$200.00	= \$0.00

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listing under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
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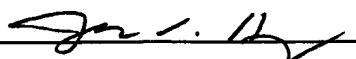
**4. OTHER FEE(S)**

Non-English specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Appellants' Brief

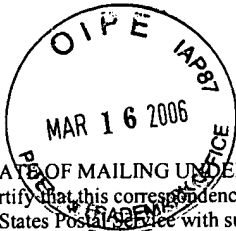
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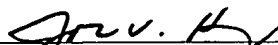
Signature		Registration No. (Attorney/Agent)	38,171	Telephone	310-824-5555
Name (Print/Type)	John V. Hanley			Date	3/13/2006

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John V. Manley, Reg. No. 38,171

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the application of

Inventor: Jean Paul Marcade, et al.

Serial No. 09/777,274

Filed: February 5, 2001

For: BIFURCATED GRAFT WITH AN  
INFERIOR EXTENSION

Date: March 10, 2006

Examiner: David Willse

Group Art Unit: 3738

Client ID/Matter No. ENDOV-54735

APPELLANT'S BRIEF (CFR § 1.192)

MS: Appeal Brief Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Appellant's Brief is being filed in response to a final Office action dated August 23, 2005. The Notice of Appeal and Petition For a Two Month Extension of Time along with the fees required under § 1.17 were submitted on January 13, 2006. Submitted herewith is the fee required under 37 CFR § 41.20 (b)(2). In the event additional fees are required, authorization is hereby provided to charge our Deposit Account No. 06-2425 any fees due in connection with this paper.

This brief contains items under the following headings, and in the order set forth below:

- I. REAL PARTY IN INTEREST
- II. RELATED APPEALS AND INTERFERENCES
- III. STATUS OF CLAIMS
- IV. STATUS OF AMENDMENTS
- V. SUMMARY OF CLAIMED INVENTION
- VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
- VII. ARGUMENT
- VIII. CLAIMS APPENDIX

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is the following party: EndoVascular Technologies, Inc., 3200 Lakeside Drive, Santa Clara, CA 95054, which is a wholly-owned subsidiary of Guidant Corporation, 111 Monument Circle, 29<sup>th</sup> Floor, Indianapolis, IN 46204-5129.

II. RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly effect, or be directly effected by, or have a bearing on the Board's decision on this appeal, it is to be noted that an appeal has been filed in respect of co-pending U.S. Application No. 09/637,505 which is an application in the family of applications to which the present matter belongs.

### III. STATUS OF CLAIMS

The status of the claims in this application are:

#### A. Total Number of Claims in the Application

The claims in the application are: Claims 67-72 and 74-82

#### B. Status of All of the Claims

Each of pending claims 67-72 and 74-82 stand as finally rejected under 35 U.S.C.

§ 102(e).

#### C. Claims on Appeal

The claims on appeal are each of pending claims 67-72 and 74-82.

### IV. STATUS OF AMENDMENTS

On August 23, 2005, claims 67-72 and 74-82 were finally rejected under 35 U.S.C.

§ 102(e) as being anticipated by Martin (5,653,743; Exhibit A).

### V. SUMMARY OF CLAIMED INVENTION

As set forth in the specification of the present application, and recited in independent claim 67, the present invention is directed towards a device for repairing a bifurcated section of vasculature including first (202), second (206) and third (208) sections (See p. 30, ln. 6 et seq.; FIGS. 3A-J).

One embodiment of the device for repairing vasculature disclosed in the present application is shown in FIG. 1. Such a device is described as including a body (base member 112) which includes first and second legs (132, 134) (See p. 18, ln. 36 et seq.). As shown in FIG. 1, one of the legs 132 extending from the body 112 is longer than the other of the legs 134.

The disclosed device also includes an extender in the form of a graft (114) which is configured to mate with the longer leg 132 (See FIG. 1; p. 17, ln. 35 et seq.). Moreover, with reference again to FIGS. 3A-J and its associated description, the device is configured within vasculature so that the first leg 132 extends into one of the second and third sections 206, 208 of vasculature and the second leg 134 terminates in the first section 202 of vasculature.

Additionally, it is clear from the specification that the disclosed device is configured to be placed within an aorta as recited in dependent claim 70 as well as sized to fit an aorta-iliac segment as recited in claim 82 (See p. 15, ln. 21 et seq.). Moreover, as required by dependent claim 81, the disclosed device includes one leg 134 which increases in diameter (See p. 19, ln. 3 et seq.).

## VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 67-72 and 74-82 were improperly rejected under 35 U.S.C. § 102(e) as being anticipated by Martin.

## VII. ARGUMENT

### A. Overview

In order for there to be anticipation under 35 U.S.C. § 102(e), each and every limitation must be taught by the prior art reference being cited by the Examiner. Thus, art that does not teach each limitation recited in a claim does not qualify as anticipatory art.

B. § 102(e): Claims 67-72 and 74-82

Independent claim 67 and dependent claims 68-72 and 74-82 are believed to be allowable over the Martin patent. It is respectfully submitted that the Martin patent does not qualify as § 102(e) art since it does not teach each and every limitation recited in claims 67-72 and 74-82.

In the Office Action dated August 23, 2005, claims 67-72 and 74-82 were rejected under 35 U.S.C. § 102(e) as being anticipated by Martin (5,653,743). In rejecting the claims, the Examiner stated that the extender 18 of the cited Martin patent is "certainly capable of mating with the longer leg 6, even though such was not the intent." The Examiner further stated that "If the extender 18 engages the longer leg 6 after the graft 2 has been placed in vasculature, it is likely that one of the arteries at a bifurcation would be obstructed. However, at the time of the present invention it was known that such a problem could be overcome by bypass surgery as evidenced by column 2, lines 1-7, of Goicoechea et al., US 5,800,508 (Exhibit B)."

It is respectfully submitted, however, that the cited Martin patent does not anticipate the subject matter recited in the pending claims. As stated, anticipation under § 102 requires that each and every element or limitation of the claimed invention be disclosed in a single prior art reference. Further, for there to be anticipation, the recited limitations must either be inherent or disclosed expressly and must be arranged as in the claim. Moreover, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention.

Since the Examiner indicates that the cited Martin patent does not teach further extending a longer leg as is required by independent claim 67, "each and every" recited limitation in independent claim 67 is not found in Martin as is required under § 102. Moreover, since the Martin patent is concerned with maintaining perfusion to body organs (See column 1, lines 14 et seq.), a person of ordinary skill would not read the Martin patent and conclude that it would be

logical to "obstruct" portions of vasculature as the Examiner suggests. Thus, the difference between the teachings of the Martin patent and the subject matter recited in the claims is not bridged by one of ordinary skill in the art. More specifically, one of ordinary skill in the art would not further extend leg 18 of the Martin device if the result would be to cause an obstruction. Finally, it is respectfully submitted that the reliance by the Examiner upon the teachings of the Goicoechea et al. patent as evidence that an obstruction problem could be overcome by bypass surgery clearly exhibits the shortcomings of the Martin patent as anticipatory art. That is, reliance on the teachings of other art aside from that of the cited Martin patent supports the Applicants' position that the Martin patent does not teach each and every limitation recited in the claims and thus, the Martin patent does not constitute anticipatory art.

Accordingly, it is respectfully submitted that each of the pending claims recite subject matter which is patentable over the cited Martin patent.

Additionally, it is respectfully submitted that the cited Martin reference does not teach the subject matter recited in dependent claims 70 and 82 and 81. That is, since the Martin device is contemplated to be employed to treat a hypogastric artery, prosthesis 1 of Martin is not taught to be placed within an aorta or for that matter, it is not sized to fit an aorto-iliac segment as required by claims 70 and 82, respectively. Further, prosthesis 1 of Martin clearly does not include a leg within an increasing diameter as is required by claim 81. Thus, it is submitted that claims 70, 81, and 82 are further distinguishable and allowable for these reasons as well.

Accordingly, it is the position of the Appellants that the Martin reference does not teach each and every limitation recited in claims 67-72 and 74-82 as is required and § 102(e). As such, it is respectfully submitted that claims 67-72 and 74-82 are allowable over the cited Martin reference.



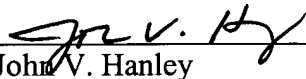
it is respectfully submitted that claims 67-72 and 74-82 are allowable over the cited Martin reference.

CONCLUSION

For all the reasons stated above, Applicants respectfully submit that the Examiner has erred in rejecting claims 67-72 and 74-82. It is respectfully requested that the Board reverse the rejection of these claims and thus, pass pending claims 67-72 and 74-82 to issue.

Respectfully submitted,

FULWIDER PATTON LLP

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## VIII. CLAIMS

Claims 1-66 (canceled)

Claim 67 (previously presented): A device for repairing a patient's vasculature including a first section and second and third sections bifurcating therefrom, comprising:

a body, the body having a superior end portion and a bifurcated inferior end portion defining a first leg and a second leg, the first leg being longer than the second leg, wherein the body is configured so that the first leg extends into one of the second and third sections of vasculature and the second leg terminates in the first section of vasculature; and

an extender in the form of a graft, the extender configured to mate with the first leg after the body is placed in vasculature.

Claim 68 (previously presented): The device of claim 67, wherein the body is a tubular graft.

Claim 69 (previously presented): The device of claim 67, wherein the extender is tubular.

Claim 70 (previously presented): The device of claim 67, wherein the superior end of the device is configured to be placed within an aorta and the first leg is configured to be placed within an iliac artery.

Claim 71 (previously presented): The device of claim 67, wherein the first leg is configured to be received within the extender.

Claim 72 (previously presented): The device of claim 67, wherein the extender is configured to be received within the first leg.

Claim 73 (canceled)

Claim 74 (previously presented): The device of claim 67, wherein the first leg is configured to terminate in the second section of the patient's vasculature.

Claim 75 (previously presented): The device of claim 67, further comprising a support device placed within the body.

Claim 76 (previously presented): The device of claim 75, wherein the support device is self-expanding.

Claim 77 (previously presented): The device of claim 67, further comprising a support device placed within the extender.

Claim 78 (previously presented): The device of claim 77, wherein the support device is self-expanding.

Claim 79 (previously presented): The device of claim 67, further comprising radiopaque markers attached to the body.

Claim 80 (previously presented): The device of claim 67, further comprising radiopaque markers attached to the extender.

Claim 81 (previously presented): The device of claim 67, wherein at least one of the first and second legs has an increasing diameter.

Claim 82 (new): The device of claim 67, wherein the bifurcated body is sized to fit an aorto-iliac segment.